No. 123.

Sup. Ct. U. S.
FILED
DEC 14 1898
JAMES H. McKENNEY,
Clerk.

Sup. Ct. No. 16,669.
Reply Brief for Burgett for P.

IN THE

SUPREME COURT OF THE UNITED STATES,

Filed Dec. 14th, 1898.

OCTOBER TERM, 1897.

JOHN A. LOMAX,
Plaintiff in Error,
vs.
AQUILA H. PICKERING,
Defendant in Error.

Writ of Error to Supreme Court, State of Illinois.

Reply Brief for Plaintiff in Error.

JOHN M. H. BURGETT,
Attorney for Plaintiff in Error.

JAMES MAHER,
A. W. BROWNE,
Of Counsel.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 87 CLARK STREET.
1898.

Gen. No. 16,609.
Term No. 123.

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Reply Brief for Plaintiff in Error.

MAY IT PLEASE THE COURT:

The brief filed by the defendant in error herein, upon an analysis of his argument, may be summarized as a contention that a *bona fide* purchaser of Indian lands in the State of Illinois, must buy them at his peril, and that no State or Federal laws applicable to the purchase of other real estate and the recording of conveyances thereof have any bearing upon the subject.

In the case at bar, the grantors of plaintiff in error purchased the land of a certain Indian, Joseph Robinson, in reliance upon the terms and conditions of a

certain treaty between the United States of America and the United Nation of Chippewa, Ottawa and Pottawatomie Indians, and a patent issued pursuant to that treaty, which treaty and patent the plaintiff in error and the whole world was bound to take notice of, and both of which provided that the said land could never be sold or conveyed without the consent of the President of the United States. Plaintiff in error's grantor McClure, looked in the recorder's office of Cook county, Illinois, where the lands were situated, and found no record of any such permission having been granted, and he looked in vain in the records in Washington and could find no such permission, and it is not contended by counsel for the defendant in error that there is any proof that any such permission of the President had been recorded in Illinois, or that there was legal evidence of record in Washington at the time the grantors of plaintiff in error obtained their deed. (It must be remembered also that the *original* Horton deed never had, nor has it now, upon the face, the approval of the President upon it). The counsel for defendant in error simply takes the position that if, as a matter of fact, the President of the United States had approved some prior conveyance of the land by the Indian, that the plaintiff in error was bound to know that fact, although there was no possible means of finding it out. His argument virtually amounts to a contention that if any President of the United States had at any time given permission to the Indian by a written assent, which such President may have kept in his own pocket, or by a mere verbal assent, that it would be the duty of the plaintiff in

error at the time he purchased it to find out such fact, though there was no possible way under Heaven by which he could possibly have found it out.

It is quite certain that when President Grant approved the deed, through which plaintiff in error claims, that President Grant himself had no means or could not find out that a former deed had also been approved by him, and if President Grant, sitting amidst all the archives in Washington, could not find out such fact, we do not know how the plaintiff in error could be supposed to find it out. Plaintiff in error did all that was possible for him to do, did all which the law requried him to do, he looked in the recorder's office in Illinois where the lands were situated, and he looked in the Department at Washington and found no trace that any such permission had previously been granted to convey the lands, and consequently had a right to believe that he was entitled to purchase them in good faith, and he did so purchase them and obtained the consent of the President to his purchase, and having so done we know of no rule of law or equity by which, upon the record presented at bar, his purchase should not be sustained. We respectfully submit that if the law presented by the case at bar were held to be otherwise than contended for by us in this regard, all the books which have been written upon the subject of the conveyance of real estate, and record titles, and all the decisions emanating from all the courts upon those subjects, would have been written and made in vain. We do not desire to make any lengthened reply argument in this case because we deem all the essential facts and law

to have already been submitted to the court in our original brief.

And we therefore submit the case and respectfully ask a reversal of the judgment of the Supreme Court of the State of Illinois.

JOHN M. H. BURGETT,
Attorney for Plaintiff in Error.

JAMES MAHER,
A. W. BROWNE,
Of Counsel..